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OAKLEY, INC.
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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 OAKLEY, INC., a Washington
14 corporation,

15 Plaintiff,

16 v.

17 FRY'S ELECTRONICS, INC., a
18 California corporation, and NIGHT OWL
SP, LLC, a Florida company,

19 Defendants.
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Civil Action No. **13CV1292 WQHBGS**

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

COMPLAINT

1 Plaintiff Oakley, Inc. (“Oakley”) hereby complains of Defendants Fry’s
2 Electronics, Inc. (“Fry’s”) and Night Owl SP, LLC (“Night Owl”) (collectively,
3 “Defendants”) and alleges as follows:

4 **I. JURISDICTION AND VENUE**

5 1. This Court has subject matter jurisdiction over this action pursuant
6 to 28 U.S.C. § 1331 and 1338, as it arises under the patent laws of the United
7 States.

8 2. This Court has personal jurisdiction over Defendants because
9 Defendants each have a continuous, systematic, and substantial presence within
10 this judicial district including by selling and offering for sale infringing products
11 for sale in this judicial district, and by committing acts of patent infringement in
12 this judicial district, including but not limited to selling infringing eyewear
13 directly to consumers and/or retailers in this district and selling into the stream
14 of commerce knowing such products would be sold in California and this
15 district, which acts form a substantial part of the events or omissions giving rise
16 to Oakley’s claim.

17 3. Venue is proper in this judicial district under 28 U.S.C. § 1391 (b)
18 and (c), and 28 U.S.C. § 1400(b).

19 **II. THE PARTIES**

20 4. Plaintiff Oakley is a corporation organized and existing under the
21 laws of the State of Washington, having its principal place of business at One
22 Icon, Foothill Ranch, California 92610.

23 5. Plaintiff is informed and believes, and thereon alleges, that
24 Defendant Fry’s is a corporation organized and existing under the laws of the
25 state of California, having its principal place of business at 600 E. Brokaw
26 Road, San Jose, California 95112.

27 6. Plaintiff is informed and believes, and thereon alleges, that
28 Defendant Night Owl is a limited liability company organized and existing

1 under the laws of the state of Florida, having its principal place of business at
2 4720 Radio Road, Naples, Florida 34104.

3 7. Oakley is informed and believes, and thereon alleges, that
4 Defendants have each committed the acts alleged herein within this judicial
5 district.

6 **III. GENERAL ALLEGATIONS**

7 8. Oakley has been actively engaged in the manufacture and sale of
8 high quality eyewear since at least 1985. Oakley is the manufacturer and
9 retailer of several lines of eyewear that have enjoyed substantial success and are
10 protected by various intellectual property rights owned by Oakley.

11 9. On June 20, 2006, the United States Patent and Trademark Office
12 duly and lawfully issued United States Design Patent No. D523,461 (“the D461
13 Patent”), entitled “EYEGLASS COMPONENT.” Oakley is the owner by
14 assignment of all right, title, and interest in the D461 Patent. A true and correct
15 copy of the D461 Patent is attached hereto as Exhibit A.

16 10. Defendants manufacture, use, sell, offer for sale and/or import into
17 the United States eyewear that infringes Oakley’s intellectual property rights.

18 **IV. CLAIM FOR RELIEF**

19 (Patent Infringement)
20 (35 U.S.C. § 271)

21 12. Oakley repeats and re-alleges the allegations of paragraphs 1-11 of
22 this complaint as if set forth fully herein.

23 13. This is a claim for patent infringement under 35 U.S.C. § 271.

24 14. Defendants, through their agents, employees and servants, have,
25 and continue to, knowingly, intentionally and willfully infringe the D461 Patent
26 by making, using, selling, offering for sale and/or importing eyewear that is
27 covered by the claim of the D461 Patent, including Defendants’ *Covert Video*
28 *Sunglasses*.

1 15. Defendants' acts of infringement of the D461 Patent were
2 undertaken without permission or license from Oakley. Defendants had
3 knowledge of the D461 Patent and their actions constitute willful and
4 intentional infringement of the D461 Patent. Defendants infringed the D461
5 Patent with reckless disregard of Oakley's patent rights. Defendants knew, or it
6 was so obvious that Defendants should have known, that their actions
7 constituted infringement of the D461 Patent. Defendants' acts of infringement
8 of the D461 Patent were not consistent with the standards for their industry.

9 16. As a direct and proximate result of Defendants' infringement of the
10 D461 Patent, Defendants have derived and received gains, profits, and
11 advantages in an amount not presently known to Oakley.

12 17. Pursuant to 35 U.S.C. § 289, Oakley is entitled to Defendants' total
13 profits from Defendants' infringement of the D461 Patent.

14 18. Pursuant to 35 U.S.C. § 284, Oakley is entitled to damages for
15 Defendants' infringing acts and treble damages, together with interests and costs
16 as fixed by this Court.

17 19. Pursuant to 35 U.S.C. § 285, Oakley is entitled to reasonable
18 attorneys' fees for the necessity of bringing this claim.

19 20. Due to the aforesaid infringing acts, Oakley has suffered great and
20 irreparable injury, for which Oakley has no adequate remedy at law.

21 21. Defendants will continue to infringe the D461 Patent to the great
22 and irreparable injury of Oakley, unless enjoined by this Court.

23 **WHEREFORE**, Oakley prays for judgment in its favor against
24 Defendants for the following relief:

25 A. An Order adjudging Defendants to have infringed the D461 Patent
26 under 35 U.S.C. § 271;

27 B. An Order adjudging Defendants' infringement to have been willful;

28 C. A preliminary and permanent injunction enjoining Defendants,

1 their respective officers, directors, agents, servants, employees and attorneys,
2 and those persons in active concert or participation with Defendants, from
3 infringing the D461 Patent in violation of 35 U.S.C. § 271;

4 D. That Defendants account for all gains, profits, and advantages
5 derived by Defendants' infringement of the D461 Patent in violation of 35
6 U.S.C. § 271, and that Defendants pay to Oakley all damages suffered by
7 Oakley and/or Defendants' total profits from such infringement;

8 E. An Order for a trebling of damages and/or exemplary damages
9 because of Defendants' willful conduct pursuant to 35 U.S.C. § 284;

10 F. An Order adjudging that this is an exceptional case;

11 G. An award to Oakley of the attorneys' fees and costs incurred by
12 Oakley in connection with this action pursuant to 35 U.S.C. § 285;

13 H. An award of pre-judgment and post-judgment interest and costs of
14 this action against Defendants;

15 I. That Oakley have and recover the costs of this civil action,
16 including reasonable attorneys' fees.

17 J. An award of pre-judgment and post-judgment interest and costs of
18 this action against Defendants;

19 K. Such other and further relief as this Court may deem just and
20 proper.

21 Respectfully submitted,

22 KNOBBE, MARTENS, OLSON & BEAR, LLP
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25 Dated: June 4, 2013

By: /s/Ali S. Razai

26 Michael K. Friedland
27 Ali S. Razai
28 Laura E. Hall

Attorneys for Plaintiff
OAKLEY, INC.

DEMAND FOR JURY TRIAL

Plaintiff Oakley, Inc. hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 4, 2013

By: /s/Ali S. Razai

Michael K. Friedland

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Laura E. Hall

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TABLE OF EXHIBITS

Page #

Exhibit A..... 1

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EXHIBIT A



US00D523461S

(12) **United States Design Patent**
Jannard et al.

(10) **Patent No.:** **US D523,461 S**
 (45) **Date of Patent:** **** Jun. 20, 2006**

(54) **EYEGLASS COMPONENT**

(75) Inventors: **James H. Jannard**, Spieden Island, WA (US); **Hans Karsten Moritz**, Foothill Ranch, CA (US); **Lek Thixton**, Orcas, WA (US)

(73) Assignee: **Oakley, Inc.**, Foothill Ranch, CA (US)

(**) Term: **14 Years**

(21) Appl. No.: **29/227,304**

(22) Filed: **Apr. 7, 2005**

Related U.S. Application Data

(62) Division of application No. 29/218,487, filed on Dec. 2, 1906.

(51) **LOC (8) Cl.** **16-06**

(52) **U.S. Cl.** **D16/309; D16/330; D16/335**

(58) **Field of Classification Search** D16/300-330,
 D16/101, 332-338; D29/109-110; D24/110.2;
 351/41, 44, 51-52, 158, 92, 103-111, 130,
 351/61; 2/426-432, 448, 441, 447, 434-437;
 D14/189, 192, 372

See application file for complete search history.

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Primary Examiner—Raphael Barkai

(74) *Attorney, Agent, or Firm*—Gregory K. Nelson

(57) **CLAIM**

The ornamental design for an eyeglass component, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass component of the present invention;
 FIG. 2 is a front elevational view thereof;
 FIG. 3 is a rear elevational view thereof;
 FIG. 4 is a left-side elevational view thereof, the right-side elevational view being a mirror image thereof;
 FIG. 5 is a top elevational view thereof; and,
 FIG. 6 is a bottom plan view thereof.

1 Claim, 4 Drawing Sheets



US D523,461 S

Page 2

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U.S. Patent

Jun. 20, 2006

Sheet 1 of 4

US D523,461 S

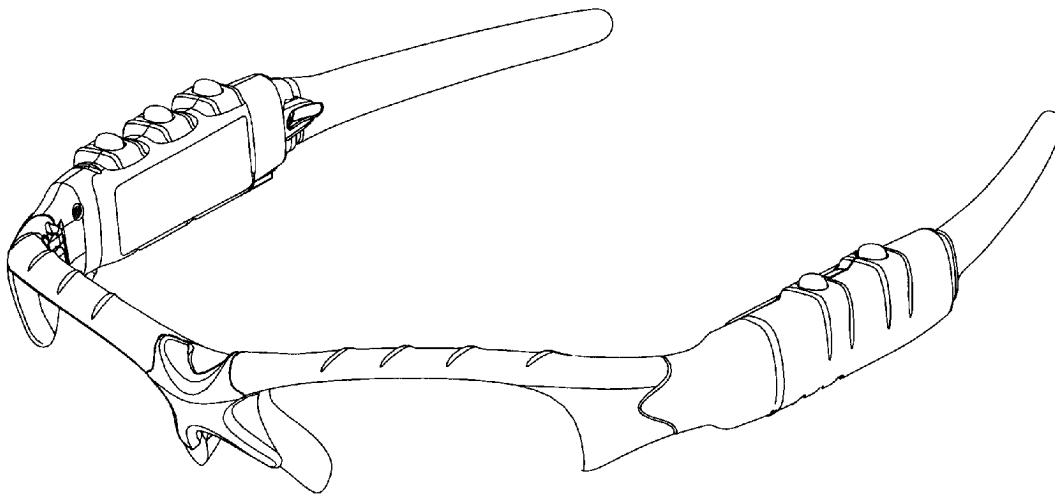


FIG. 1

U.S. Patent

Jun. 20, 2006

Sheet 2 of 4

US D523,461 S

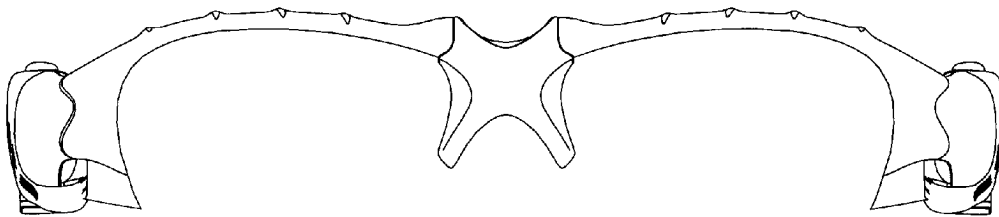


FIG. 2

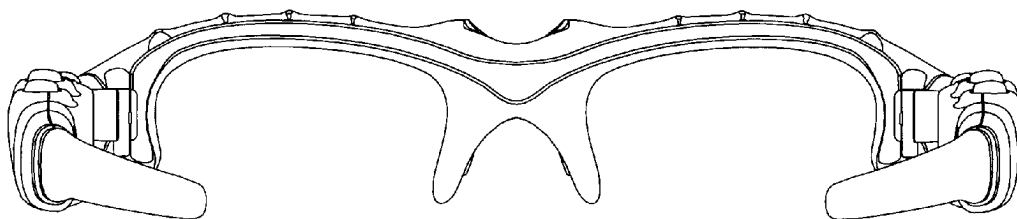


FIG. 3

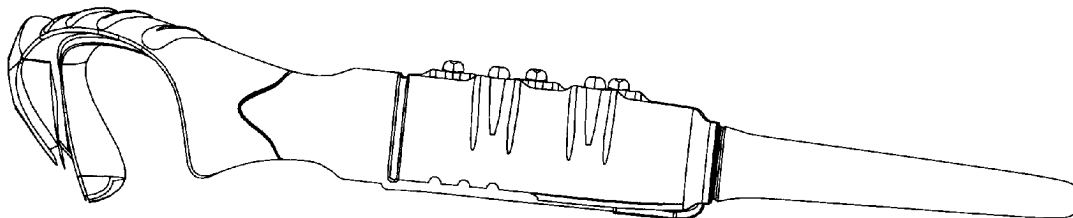


FIG. 4

U.S. Patent

Jun. 20, 2006

Sheet 3 of 4

US D523,461 S

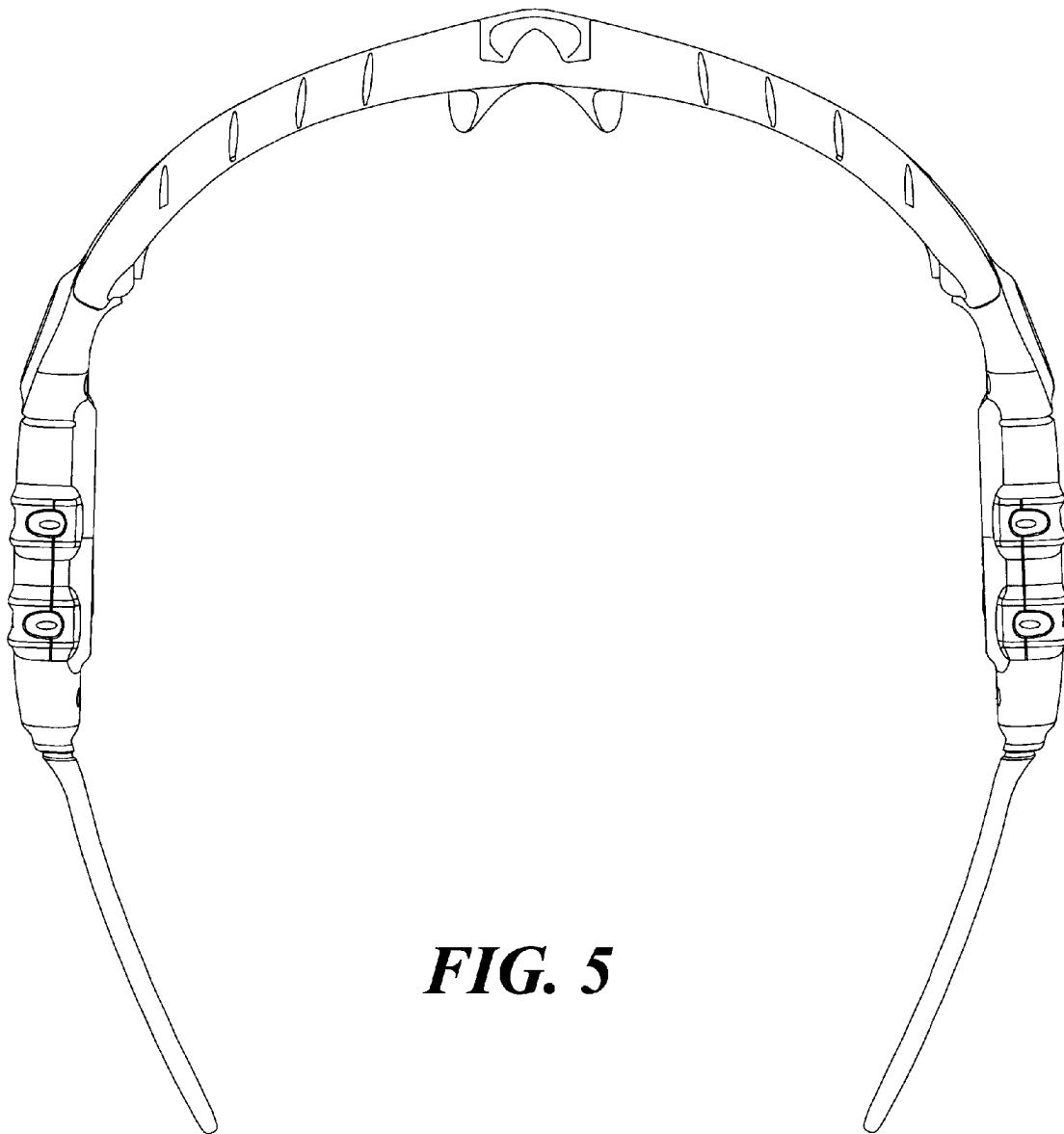


FIG. 5

U.S. Patent

Jun. 20, 2006

Sheet 4 of 4

US D523,461 S

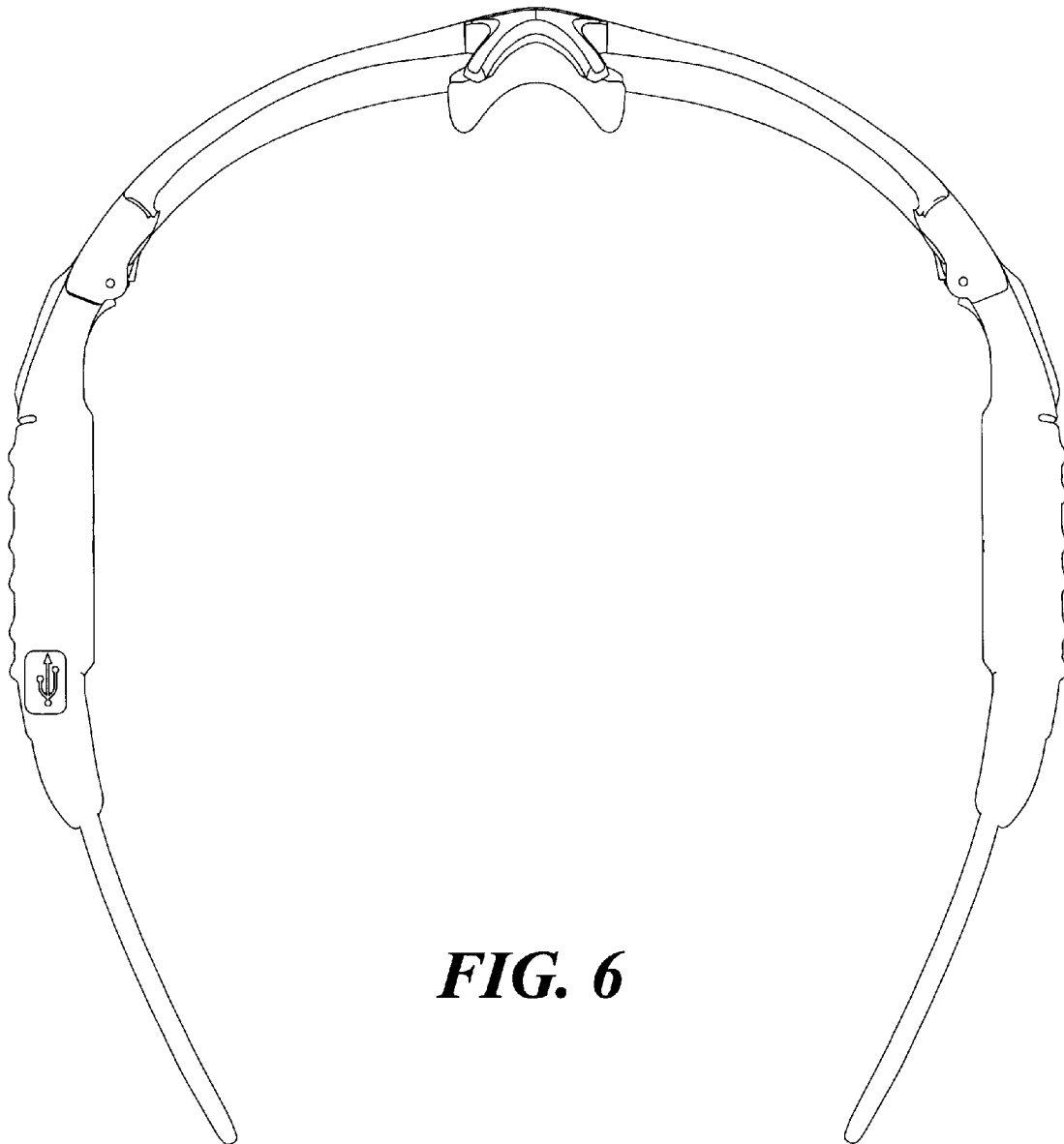


FIG. 6